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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/342,993	06/29/1999	JUDES POIRIER	08523/005002	7392

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CLARK & ELBING LLP
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EXAMINER

CARLSON, KAREN C

ART UNIT	PAPER NUMBER
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1653

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24

Please find below and/or attached an Office communication concerning this application or proceeding.



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Commissioner for Patents

MPEP 706.07(h)(VII) states:

In addition, as 35 U.S.C. 132(b) and 37 CFR 1.114 provide continued examination of an application (and not examination of a continuing application), the applicant cannot file an RCE to obtain continued examination on the basis of claims that are independent and distinct from the claims previously claimed and examined as a matter of right (i.e., applicant cannot switch inventions) (see 37 CFR 1.145).

MPEP 819 Office Generally Does Not Permit Shift

The general policy of the Office is not to permit the applicant to shift to claiming another invention after an election is once made and action given on the elected subject matter. Note that the applicant cannot, as a matter of right, file a request for continued examination (RCE) to obtain continued examination on the basis of claims that are independent and distinct from the claims previously claimed and examined (i.e., applicant cannot switch inventions by way of an RCE as a matter of right). When claims are presented which the examiner holds are drawn to an invention other than the one elected, he or she should treat the claims as outlined in MPEP § 821.03.

Receipt is acknowledged of a request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e) and a submission, filed on June 18, 2003. The submission, however, is not fully responsive to the prior Office action because:

In the advisory action mailed January 23, 2003, the Examiner stated:

In Claim 1, the wording has been changed such that the claimed invention differs from that examined. For example, the method used to comprising determining the presence of apoE4 alleles and then the absence of alleles indicates a result. Now, Claim 1 reads that the method comprises determining apoE4 alleles where in the absence of one of the alleles indicates a result. These are different methods. Further, it is not clear how one will know if an allele is not present, because it would not be present in the determination of apoE4 alleles. See also Claims 4 and 5. Further, Claims 4 and 5 are now drawn to genotyping, which was not examined, and it is not clear how groups would be divided into treatment groups. Applicants have still not submitted a terminal disclaimer, which would prevent allowance of claims.

Since the submission appears to be a bona fide attempt to provide a complete reply to the prior Office action, applicant is given a shortened statutory period of ONE MONTH or THIRTY DAYS from the mailing date of this letter, whichever is longer, to submit a complete reply. This shortened statutory period for reply supersedes the time period set in the prior Office action. This time period may be extended pursuant to 37 CFR 1.136(a).

KAREN COCHRANE CARLSON, PH.D.
PRIMARY EXAMINER